

## Calendar No. 642

106TH CONGRESS  
2D SESSION**S. 2071**

To benefit electricity consumers by promoting the reliability of the bulk-power system.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2000

Mr. GORTON (for himself, Mr. BINGAMAN, Mr. DOMENICI, Mr. FITZGERALD, Mr. SMITH of Oregon, and Mr. BUNNING) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 27, 2000

Reported by Mr. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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**A BILL**

To benefit electricity consumers by promoting the reliability of the bulk-power system.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electric Reliability  
5       2000 Act”.

1 **SEC. 2. ELECTRIC RELIABILITY ORGANIZATION.**

2 (a) IN GENERAL.—Part II of the Federal Power Act  
3 (16 U.S.C. 824 et seq.) is amended by adding at the end  
4 the following:

5 **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-  
8 TY.—The term ‘affiliated regional reliability entity’  
9 means an entity delegated authority under sub-  
10 section (h):

11 “(2) BULK-POWER SYSTEM.—

12 “(A) IN GENERAL.—The term ‘bulk-power  
13 system’ means all facilities and control systems  
14 necessary for operating an interconnected elec-  
15 tric power transmission grid or any portion of  
16 an interconnected transmission grid:

17 “(B) INCLUSIONS.—The term ‘bulk-power  
18 system’ includes—

19 “(i) high voltage transmission lines,  
20 substations, control centers, communica-  
21 tions, data, and operations planning facili-  
22 ties necessary for the operation of all or  
23 any part of the interconnected trans-  
24 mission grid; and

1                   “(ii) the output of generating units  
2                   necessary to maintain the reliability of the  
3                   transmission grid.

4                   “(3) BULK-POWER SYSTEM USER.—The term  
5                   ‘bulk-power system user’ means an entity that—

6                   “(A) sells, purchases, or transmits electric  
7                   energy over a bulk-power system; or

8                   “(B) owns, operates, or maintains facilities  
9                   or control systems that are part of a bulk-power  
10                  system; or

11                  “(C) is a system operator.

12                  “(4) ELECTRIC RELIABILITY ORGANIZATION.—  
13                  The term ‘electric reliability organization’ means the  
14                  organization designated by the Commission under  
15                  subsection (d).

16                  “(5) ENTITY RULE.—The term ‘entity rule’  
17                  means a rule adopted by an affiliated regional reli-  
18                  ability entity for a specific region and designed to  
19                  implement or enforce 1 or more organization stand-  
20                  ards.

21                  “(6) INDEPENDENT DIRECTOR.—The term  
22                  ‘independent director’ means a person that—

23                  “(A) is not an officer or employee of an  
24                  entity that would reasonably be perceived as  
25                  having a direct financial interest in the outcome

of a decision by the board of directors of the electric reliability organization; and

“(B) does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director of the electric reliability organization.

“(7) INDUSTRY SECTOR.—The term ‘industry sector’ means a group of bulk-power system users with substantially similar commercial interests, as determined by the board of directors of the electric reliability organization.

“(8) INTERCONNECTION.—The term ‘interconnection’ means a geographic area in which the operation of bulk-power system components is synchronized so that the failure of 1 or more of the components may adversely affect the ability of the operators of other components within the interconnection to maintain safe and reliable operation of the facilities within their control.

“(9) ORGANIZATION STANDARD.—

“(A) IN GENERAL.—The term ‘organization standard’ means a policy or standard adopted by the electric reliability organization to provide for the reliable operation of a bulk-power system.

1           “(B) INCLUSIONS.—The term ‘organiza-  
2           tion standard’ includes—

3                   “(i) an entity rule approved by the  
4                   electric reliability organization; and

5                   “(ii) a variance approved by the elec-  
6                   tric reliability organization.

7           “(10) PUBLIC INTEREST GROUP.—

8                   “(A) IN GENERAL.—The term ‘public in-  
9                   terest group’ means a nonprofit private or pub-  
10                  lic organization that has an interest in the ac-  
11                  tivities of the electric reliability organization.

12           “(B) INCLUSIONS.—The term ‘public in-  
13           terest group’ includes—

14                   “(i) a ratepayer advocate;

15                   “(ii) an environmental group; and

16                   “(iii) a State or local government or-  
17                  ganization that regulates participants in,  
18                  and promulgates government policy with  
19                  respect to, the market for electric energy.

20           “(11) SYSTEM OPERATOR.—

21                   “(A) IN GENERAL.—The term ‘system op-  
22                  erator’ means an entity that operates or is re-  
23                  sponsible for the operation of a bulk-power sys-  
24                  tem.

“(B) INCLUSIONS.—The term ‘system operator’ includes—

“(i) a control area operator;

“(ii) an independent system operator;

“(iii) a transmission company;

“(iv) a transmission system operator;

and

“(v) a regional security coordinator.

“(12) VARIANCE.—The term ‘variance’ means an exception from the requirements of an organization standard (including a proposal for an organization standard in a case in which there is no organization standard) that is adopted by an affiliated regional reliability entity and is applicable to all or a part of the region for which the affiliated regional reliability entity is responsible.

“(b) COMMISSION AUTHORITY.—

“(1) JURISDICTION.—Notwithstanding section 201(f), within the United States, the Commission shall have jurisdiction over the electric reliability organization, all affiliated regional reliability entities, all system operators, and all bulk-power system users, including entities described in section 201(f), for purposes of approving organization standards and enforcing compliance with this section.

1           ~~“(2) DEFINITION OF TERMS.—The Commission~~  
 2           ~~may by regulation define any term used in this sec-~~  
 3           ~~tion consistent with the definitions in subsection (a)~~  
 4           ~~and the purpose and intent of this Act.~~

5           ~~“(c) EXISTING RELIABILITY STANDARDS.—~~

6           ~~“(1) SUBMISSION TO THE COMMISSION.—Be-~~  
 7           ~~fore designation of an electric reliability organization~~  
 8           ~~under subsection (d), any person, including the~~  
 9           ~~North American Electric Reliability Council and its~~  
 10           ~~member Regional Reliability Councils, may submit~~  
 11           ~~to the Commission any reliability standard, guid-~~  
 12           ~~ance, practice, or amendment to a reliability stand-~~  
 13           ~~ard, guidance, or practice that the person proposes~~  
 14           ~~to be made mandatory and enforceable.~~

15           ~~“(2) REVIEW BY THE COMMISSION.—The Com-~~  
 16           ~~mission, after allowing interested persons an oppor-~~  
 17           ~~tunity to submit comments, may approve a proposed~~  
 18           ~~mandatory standard, guidance, practice, or amend-~~  
 19           ~~ment submitted under paragraph (1) if the Commis-~~  
 20           ~~sion finds that the standard, guidance, or practice is~~  
 21           ~~just, reasonable, not unduly discriminatory or pref-~~  
 22           ~~erential, and in the public interest.~~

23           ~~“(3) EFFECT OF APPROVAL.—A standard, guid-~~  
 24           ~~ance, or practice shall be mandatory and applicable~~

1 according to its terms following approval by the  
 2 Commission and shall remain in effect until it is—

3 “(A) ~~withdrawn, disapproved, or super-~~  
 4 ~~seded by an organization standard that is~~  
 5 ~~issued or approved by the electric reliability or-~~  
 6 ~~ganization and made effective by the Commis-~~  
 7 ~~sion under section (c); or~~

8 “(B) ~~disapproved by the Commission if, on~~  
 9 ~~complaint or upon motion by the Commission~~  
 10 ~~and after notice and an opportunity for com-~~  
 11 ~~ment, the Commission finds the standard, guid-~~  
 12 ~~ance, or practice to be unjust, unreasonable,~~  
 13 ~~unduly discriminatory or preferential, or not in~~  
 14 ~~the public interest.~~

15 “(4) ~~ENFORCEABILITY.—A standard, guidance,~~  
 16 ~~or practice in effect under this subsection shall be~~  
 17 ~~enforceable by the Commission.~~

18 “(d) ~~DESIGNATION OF ELECTRIC RELIABILITY OR-~~  
 19 ~~GANIZATION.—~~

20 “(1) ~~REGULATIONS.—~~

21 “(A) ~~PROPOSED REGULATIONS.—Not later~~  
 22 ~~than 90 days after the date of enactment of~~  
 23 ~~this section, the Commission shall propose regu-~~  
 24 ~~lations specifying procedures and requirements~~



for an entity to apply for designation as the electric reliability organization.

~~“(B) NOTICE AND COMMENT.—The Commission shall provide notice and opportunity for comment on the proposed regulations.~~

~~“(C) FINAL REGULATION.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate final regulations under this subsection.~~

~~“(2) APPLICATION.—~~

~~“(A) SUBMISSION.—Following the promulgation of final regulations under paragraph (1), an entity may submit an application to the Commission for designation as the electric reliability organization.~~

~~“(B) CONTENTS.—The applicant shall describe in the application—~~

~~“(i) the governance and procedures of the applicant; and~~

~~“(ii) the funding mechanism and initial funding requirements of the applicant.~~

~~“(3) NOTICE AND COMMENT.—The Commission shall—~~

~~“(A) provide public notice of the application; and~~

1           “(B) afford interested parties an oppor-  
2           tunity to comment.

3           ~~“(4) DESIGNATION OF ELECTRIC RELIABILITY~~  
4           ~~ORGANIZATION.—~~The Commission shall designate  
5           the applicant as the electric reliability organization  
6           if the Commission determines that the applicant—

7           ~~“(A) has the ability to develop, implement,~~  
8           ~~and enforce standards that provide for an ade-~~  
9           ~~quate level of reliability of bulk-power systems;~~

10          ~~“(B) permits voluntary membership to any~~  
11          ~~bulk-power system user or public interest~~  
12          ~~group;~~

13          ~~“(C) ensures fair representation of its~~  
14          ~~members in the selection of its directors and~~  
15          ~~fair management of its affairs, taking into ac-~~  
16          ~~count the need for efficiency and effectiveness~~  
17          ~~in decisionmaking and operations and the re-~~  
18          ~~quirements for technical competency in the de-~~  
19          ~~velopment of organization standards and the ex-~~  
20          ~~ercise of oversight of bulk-power system reli-~~  
21          ~~ability;~~

22          ~~“(D) ensures that no 2 industry sectors~~  
23          ~~have the ability to control, and no 1 industry~~  
24          ~~sector has the ability to veto, the applicant’s~~  
25          ~~discharge of its responsibilities as the electric~~

1 reliability organization (including actions by  
2 committees recommending standards for ap-  
3 proval by the board or other board actions to  
4 implement and enforce standards);

5 “(E) provides for governance by a board  
6 wholly comprised of independent directors;

7 “(F) provides a funding mechanism and  
8 requirements that—

9 “(i) are just, reasonable, not unduly  
10 discriminatory or preferential and in the  
11 public interest; and

12 “(ii) satisfy the requirements of sub-  
13 section (I);

14 “(G) has established procedures for devel-  
15 opment of organization standards that—

16 “(i) provide reasonable notice and op-  
17 portunity for public comment, taking into  
18 account the need for efficiency and effec-  
19 tiveness in decisionmaking and operations  
20 and the requirements for technical com-  
21 petency in the development of organization  
22 standards;

23 “(ii) ensure openness, a balancing of  
24 interests, and due process; and

1                   “(iii) includes alternative procedures  
2                   to be followed in emergencies;

3                   “(H) has established fair and impartial  
4                   procedures for implementation and enforcement  
5                   of organization standards, either directly or  
6                   through delegation to an affiliated regional reli-  
7                   ability entity, including the imposition of pen-  
8                   alties, limitations on activities, functions, or op-  
9                   erations, or other appropriate sanctions;

10                  “(I) has established procedures for notice  
11                  and opportunity for public observation of all  
12                  meetings, except that the procedures for public  
13                  observation may include alternative procedures  
14                  for emergencies or for the discussion of infor-  
15                  mation that the directors reasonably determine  
16                  should take place in closed session, such as liti-  
17                  gation, personnel actions, or commercially sen-  
18                  sitive information;

19                  “(J) provides for the consideration of rec-  
20                  ommendations of States and State commissions;  
21                  and

22                  “(K) addresses other matters that the  
23                  Commission considers appropriate to ensure  
24                  that the procedures, governance, and funding of  
25                  the electric reliability organization are just, rea-

sonable, not unduly discriminatory or preferential, and in the public interest.

~~“(5) EXCLUSIVE DESIGNATION.—~~

~~“(A) IN GENERAL.—The Commission shall designate only 1 electric reliability organization.~~

~~“(B) MULTIPLE APPLICATIONS.—If the Commission receives 2 or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application that the Commission determines will best implement this section.~~

~~“(e) ORGANIZATION STANDARDS.—~~

~~“(1) SUBMISSION OF PROPOSALS TO COMMISSION.—~~

~~“(A) IN GENERAL.—The electric reliability organization shall submit to the Commission proposals for any new or modified organization standards.~~

~~“(B) CONTENTS.—A proposal submitted under subparagraph (A) shall include—~~

~~“(i) a concise statement of the purpose of the proposal; and~~

~~“(ii) a record of any proceedings conducted with respect to the proposal.~~

~~“(2) REVIEW BY THE COMMISSION.—~~

1           “(A) NOTICE AND COMMENT.—The Com-  
2 mission shall—

3               “(i) provide notice of a proposal under  
4 paragraph (1); and

5               “(ii) allow interested persons 30 days  
6 to submit comments on the proposal.

7           “(B) ACTION BY THE COMMISSION.—

8               “(i) IN GENERAL.—After taking into  
9 consideration any submitted comments, the  
10 Commission shall approve or disapprove a  
11 proposed organization standard not later  
12 than the end of the 60-day period begin-  
13 ning on the date of the deadline for the  
14 submission of comments, except that the  
15 Commission may extend the 60-day period  
16 for an additional 90 days for good cause.

17               “(ii) FAILURE TO ACT.—If the Com-  
18 mission does not approve or disapprove a  
19 proposal within the period specified in  
20 clause (i), the proposed organization stand-  
21 ard shall go into effect subject to its terms,  
22 without prejudice to the authority of the  
23 Commission to modify the organization  
24 standard in accordance with the standards  
25 and requirements of this section.

1           “(C) EFFECTIVE DATE.—An organization  
 2           standard approved by the Commission shall  
 3           take effect not earlier than 30 days after the  
 4           date of the Commission’s order of approval.

5           “(D) STANDARDS FOR APPROVAL.—

6           “(i) IN GENERAL.—The Commission  
 7           shall approve a proposed new or modified  
 8           organization standard if the Commission  
 9           determines the organization standard to be  
 10          just, reasonable, not unduly discriminatory  
 11          or preferential, and in the public interest.

12          “(ii) CONSIDERATIONS.—In the exer-  
 13          cise of its review responsibilities under this  
 14          subsection, the Commission—

15               “(I) shall give due weight to the  
 16               technical expertise of the electric reli-  
 17               ability organization with respect to  
 18               the content of a new or modified orga-  
 19               nization standard; but

20               “(II) shall not defer to the elec-  
 21               tric reliability organization with re-  
 22               spect to the effect of the organization  
 23               standard on competition.

24          “(E) REMAND.—A proposed organization  
 25          standard that is disapproved in whole or in part

1 by the Commission shall be remanded to the  
 2 electric reliability organization for further con-  
 3 sideration.

4 “(3) ORDERS TO DEVELOP OR MODIFY ORGANI-  
 5 ZATION STANDARDS.—The Commission, on com-  
 6 plaint or on motion of the Commission, may order  
 7 the electric reliability organization to develop and  
 8 submit to the Commission, by a date specified in the  
 9 order, an organization standard or modification to  
 10 an existing organization standard to address a spe-  
 11 cific matter if the Commission considers a new or  
 12 modified organization standard appropriate to carry  
 13 out this section, and the electric reliability organiza-  
 14 tion shall develop and submit the organization  
 15 standard or modification to the Commission in ac-  
 16 cordance with this subsection.

17 “(4) VARIANCES AND ENTITY RULES.—

18 “(A) PROPOSAL.—An affiliated regional  
 19 reliability entity may propose a variance or enti-  
 20 ty rule to the electric reliability organization.

21 “(B) EXPEDITED CONSIDERATION.—If ex-  
 22 pedited consideration is necessary to provide for  
 23 bulk-power system reliability, the affiliated re-  
 24 gional reliability entity may—



1           “(i) request that the electric reliability  
2           organization expedite consideration of the  
3           proposal; and

4           “(ii) file a notice of the request with  
5           the Commission.

6           “(C) FAILURE TO ACT.—

7           “(i) IN GENERAL.—If the electric reli-  
8           ability organization fails to adopt the vari-  
9           ance or entity rule, in whole or in part, the  
10          affiliated regional reliability entity may re-  
11          quest that the Commission review the pro-  
12          posal.

13          “(ii) ACTION BY THE COMMISSION.—  
14          If the Commission determines, after a re-  
15          view of the request, that the action of the  
16          electric reliability organization did not con-  
17          form to the applicable standards and pro-  
18          cedures approved by the Commission, or if  
19          the Commission determines that the vari-  
20          ance or entity rule is just, reasonable, not  
21          unduly discriminatory or preferential, and  
22          in the public interest and that the electric  
23          reliability organization has unreasonably  
24          rejected or failed to act on the proposal,  
25          the Commission may—

1                   “(I) remand the proposal for fur-  
 2                   ther consideration by the electric reli-  
 3                   ability organization; or

4                   “(II) order the electric reliability  
 5                   organization or the affiliated regional  
 6                   reliability entity to develop a variance  
 7                   or entity rule consistent with that re-  
 8                   quested by the affiliated regional reli-  
 9                   ability entity.

10                  “(D) PROCEDURE.—A variance or entity  
 11                  rule proposed by an affiliated regional reliability  
 12                  entity shall be submitted to the electric reli-  
 13                  ability organization for review and submission  
 14                  to the Commission in accordance with the pro-  
 15                  cedures specified in paragraph (2).

16                  “(5) IMMEDIATE EFFECTIVENESS.—

17                  “(A) IN GENERAL.—Notwithstanding any  
 18                  other provision of this subsection, a new or  
 19                  modified organization standard shall take effect  
 20                  immediately on submission to the Commission  
 21                  without notice or comment if the electric reli-  
 22                  ability organization—

23                  “(i) determines that an emergency ex-  
 24                  ists requiring that the new or modified or-

ganization standard take effect immediately without notice or comment;

“(ii) notifies the Commission as soon as practicable after making the determination;

“(iii) submits the new or modified organization standard to the Commission not later than 5 days after making the determination; and

“(iv) includes in the submission an explanation of the need for immediate effectiveness.

“(B) NOTICE AND COMMENT.—The Commission shall—

“(i) provide notice of the new or modified organization standard or amendment for comment; and

“(ii) follow the procedures set out in paragraphs (2) and (3) for review of the new or modified organization standard.

“(6) COMPLIANCE.—Each bulk power system user shall comply with an organization standard that takes effect under this section.

“(f) COORDINATION WITH CANADA AND MEXICO.—

1           ~~“(1) RECOGNITION.—The electric reliability or-~~  
 2           ~~ganization shall take all appropriate steps to gain~~  
 3           ~~recognition in Canada and Mexico.~~

4           ~~“(2) INTERNATIONAL AGREEMENTS.—~~

5           ~~“(A) IN GENERAL.—The President shall~~  
 6           ~~use best efforts to enter into international~~  
 7           ~~agreements with the appropriate governments~~  
 8           ~~of Canada and Mexico to provide for—~~

9                     ~~“(i) effective compliance with organi-~~  
 10                    ~~zation standards; and~~

11                   ~~“(ii) the effectiveness of the electric~~  
 12                    ~~reliability organization in carrying out its~~  
 13                    ~~mission and responsibilities.~~

14           ~~“(B) COMPLIANCE.—All actions taken by~~  
 15           ~~the electric reliability organization, an affiliated~~  
 16           ~~regional reliability entity, and the Commission~~  
 17           ~~shall be consistent with any international agree-~~  
 18           ~~ment under subparagraph (A).~~

19           ~~“(g) CHANGES IN PROCEDURE, GOVERNANCE, OR~~  
 20           ~~FUNDING.—~~

21           ~~“(1) SUBMISSION TO THE COMMISSION.—The~~  
 22           ~~electric reliability organization shall submit to the~~  
 23           ~~Commission—~~

24                   ~~“(A) any proposed change in a procedure;~~  
 25                    ~~governance, or funding provision; or~~

1           “(B) any change in an affiliated regional  
2           reliability entity’s procedure, governance, or  
3           funding provision relating to delegated func-  
4           tions.

5           “(2) CONTENTS.—A submission under para-  
6           graph (1) shall include an explanation of the basis  
7           and purpose for the change.

8           “(3) EFFECTIVENESS.—

9           “(A) CHANGES IN PROCEDURE.—

10           “(i) CHANGES CONSTITUTING A  
11           STATEMENT OF POLICY, PRACTICE, OR IN-  
12           TERPRETATION.—A proposed change in  
13           procedure shall take effect 90 days after  
14           submission to the Commission if the  
15           change constitutes a statement of policy,  
16           practice, or interpretation with respect to  
17           the meaning or enforcement of the proce-  
18           dure.

19           “(ii) OTHER CHANGES.—A proposed  
20           change in procedure other than a change  
21           described in clause (i) shall take effect on  
22           a finding by the Commission, after notice  
23           and opportunity for comment, that the  
24           change—

1                   “(I) is just, reasonable, not un-  
 2                   duly discriminatory or preferential,  
 3                   and in the public interest; and

4                   “(II) satisfies the requirements  
 5                   of subsection (d)(4).

6                   ~~“(B) CHANGES IN GOVERNANCE OR FUND-~~  
 7                   ~~ING.—A proposed change in governance or~~  
 8                   ~~funding shall not take effect unless the Com-~~  
 9                   ~~mission finds that the change—~~

10                   “(i) is just, reasonable, not unduly  
 11                   discriminatory or preferential, and in the  
 12                   public interest; and

13                   “(ii) satisfies the requirements of sub-  
 14                   section (d)(4).

15                   ~~“(4) ORDER TO AMEND.—~~

16                   ~~“(A) IN GENERAL.—The Commission, on~~  
 17                   ~~complaint or on the motion of the Commission,~~  
 18                   ~~may require the electric reliability organization~~  
 19                   ~~to amend a procedural, governance, or funding~~  
 20                   ~~provision if the Commission determines that the~~  
 21                   ~~amendment is necessary to meet the require-~~  
 22                   ~~ments of this section.~~

23                   ~~“(B) FILING.—The electric reliability or-~~  
 24                   ~~ganization shall submit the amendment in ac-~~  
 25                   ~~cordance with paragraph (1).~~

1       “(h) DELEGATIONS OF AUTHORITY.—

2               “(1) IN GENERAL.—

3                       “(A) IMPLEMENTATION AND ENFORCE-  
4                       MENT OF COMPLIANCE.—At the request of an  
5                       entity, the electric reliability organization shall  
6                       enter into an agreement with the entity for the  
7                       delegation of authority to implement and en-  
8                       force compliance with organization standards in  
9                       a specified geographic area if the electric reli-  
10                      ability organization finds that—

11                      “(i) the entity satisfies the require-  
12                      ments of subparagraphs (A), (B), (C), (D),  
13                      (F), (J), and (K) of subsection (d)(4); and

14                      “(ii) the delegation would promote the  
15                      effective and efficient implementation and  
16                      administration of bulk-power system reli-  
17                      ability.

18                      “(B) OTHER AUTHORITY.—The electric re-  
19                      liability organization may enter into an agree-  
20                      ment to delegate to an entity any other author-  
21                      ity, except that the electric reliability organiza-  
22                      tion shall reserve the right to set and approve  
23                      standards for bulk-power system reliability.

24               “(2) APPROVAL BY THE COMMISSION.—

1           “(A) SUBMISSION TO THE COMMISSION.—

2           The electric reliability organization shall submit  
3           to the Commission—

4                   “(i) any agreement entered into under  
5                   this subsection; and

6                   “(ii) any information the Commission  
7                   requires with respect to the affiliated re-  
8                   gional reliability entity to which authority  
9                   is delegated.

10           “(B) STANDARDS FOR APPROVAL.—The  
11           Commission shall approve the agreement, fol-  
12           lowing public notice and an opportunity for  
13           comment, if the Commission finds that the  
14           agreement—

15                   “(i) meets the requirements of para-  
16                   graph (1); and

17                   “(ii) is just, reasonable, not unduly  
18                   discriminatory or preferential, and in the  
19                   public interest.

20           “(C) REBUTTABLE PRESUMPTION.—A pro-  
21           posed delegation agreement with an affiliated  
22           regional reliability entity organized on an inter-  
23           connection-wide basis shall be rebuttably pre-  
24           sumed by the Commission to promote the effec-  
25           tive and efficient implementation and adminis-



1           tration of the reliability of the bulk-power sys-  
2           tem.

3           ~~“(D) INVALIDITY ABSENT APPROVAL.—No~~  
4           delegation by the electric reliability organization  
5           shall be valid unless the delegation is approved  
6           by the Commission.

7           ~~“(3) PROCEDURES FOR ENTITY RULES AND~~  
8           ~~VARIANCES.—~~

9           ~~“(A) IN GENERAL.—A delegation agree-~~  
10          ment under this subsection shall specify the  
11          procedures by which the affiliated regional reli-  
12          ability entity may propose entity rules or  
13          variances for review by the electric reliability  
14          organization.

15          ~~“(B) INTERCONNECTION-WIDE ENTITY~~  
16          ~~RULES AND VARIANCES.— In the case of a pro-~~  
17          posal for an entity rule or variance that would  
18          apply on an interconnection-wide basis, the elec-  
19          tric reliability organization shall approve the en-  
20          tity rule or variance unless the electric reli-  
21          ability organization makes a written finding  
22          that the entity rule or variance—

23                 ~~“(i) was not developed in a fair and~~  
24                 open process that provided an opportunity  
25                 for all interested parties to participate;

1                   “(ii) would have a significant adverse  
2                   impact on reliability or commerce in other  
3                   interconnections;

4                   “(iii) fails to provide a level of reli-  
5                   ability of the bulk-power system within the  
6                   interconnection such that the entity rule or  
7                   variance would be likely to cause a serious  
8                   and substantial threat to public health,  
9                   safety, welfare, or national security; or

10                  “(iv) would create a serious and sub-  
11                  stantial burden on competitive markets  
12                  within the interconnection that is not nec-  
13                  essary for reliability.

14                  “(C) NONINTERCONNECTION-WIDE ENTITY  
15                  RULES AND VARIANCES.—In the case of a pro-  
16                  posal for an entity rule or variance that would  
17                  apply only to part of an interconnection, the  
18                  electric reliability organization shall approve the  
19                  entity rule or variance if the affiliated regional  
20                  reliability entity demonstrates that the  
21                  proposal—

22                  “(i) was developed in a fair and open  
23                  process that provided an opportunity for  
24                  all interested parties to participate;

1           “(ii) would not have an adverse im-  
 2           pact on commerce that is not necessary for  
 3           reliability;

4           “(iii) provides a level of bulk-power  
 5           system reliability that is adequate to pro-  
 6           tect public health, safety, welfare, and na-  
 7           tional security and would not have a sig-  
 8           nificant adverse impact on reliability; and

9           “(iv) in the case of a variance, is  
 10          based on a justifiable difference between  
 11          regions or subregions within the affiliated  
 12          regional reliability entity’s geographic area.

13          “(D) ACTION BY THE ELECTRIC RELI-  
 14          ABILITY ORGANIZATION.—

15          “(i) IN GENERAL.—The electric reli-  
 16          ability organization shall approve or dis-  
 17          approve a proposal under subparagraph  
 18          (A) within 120 days after the proposal is  
 19          submitted.

20          “(ii) FAILURE TO ACT.—If the electric  
 21          reliability organization fails to act within  
 22          the time specified in clause (i), the pro-  
 23          posal shall be deemed to have been ap-  
 24          proved.

1                   ~~“(iii) SUBMISSION TO THE COMMISS-~~  
 2                   ~~SION.—After approving a proposal under~~  
 3                   ~~subparagraph (A), the electric reliability~~  
 4                   ~~organization shall submit the proposal to~~  
 5                   ~~the Commission for approval under the~~  
 6                   ~~procedures prescribed under subsection (c).~~

7                   ~~“(E) DIRECT SUBMISSIONS.—An affiliated~~  
 8                   ~~regional reliability entity may not submit a pro-~~  
 9                   ~~posal for approval directly to the Commission~~  
 10                   ~~except as provided in subsection (c)(4).~~

11                   ~~“(4) FAILURE TO REACH DELEGATION AGREE-~~  
 12                   ~~MENT.—~~

13                   ~~“(A) IN GENERAL.—If an affiliated re-~~  
 14                   ~~gional reliability entity requests, consistent with~~  
 15                   ~~paragraph (1), that the electric reliability orga-~~  
 16                   ~~nization delegate authority to it, but is unable~~  
 17                   ~~within 180 days to reach agreement with the~~  
 18                   ~~electric reliability organization with respect to~~  
 19                   ~~the requested delegation, the entity may seek~~  
 20                   ~~relief from the Commission.~~

21                   ~~“(B) REVIEW BY THE COMMISSION.—The~~  
 22                   ~~Commission shall order the electric reliability~~  
 23                   ~~organization to enter into a delegation agree-~~  
 24                   ~~ment under terms specified by the Commission~~

1 if, after notice and opportunity for comment,  
 2 the Commission determines that—

3 “(i) a delegation to the affiliated re-  
 4 gional reliability entity would—

5 “(I) meet the requirements of  
 6 paragraph (1); and

7 “(II) would be just, reasonable,  
 8 not unduly discriminatory or pref-  
 9 erential, and in the public interest;  
 10 and

11 “(ii) the electric reliability organiza-  
 12 tion unreasonably withheld the delegation.

13 “(5) ORDERS TO MODIFY DELEGATION AGREE-  
 14 MENTS.—

15 “(A) IN GENERAL.—On complaint, or on  
 16 motion of the Commission, after notice to the  
 17 appropriate affiliated regional reliability entity,  
 18 the Commission may order the electric reli-  
 19 ability organization to propose a modification to  
 20 a delegation agreement under this subsection if  
 21 the Commission determines that—

22 “(i) the affiliated regional reliability  
 23 entity—

24 “(I) no longer has the capacity to  
 25 carry out effectively or efficiently the

1 implementation or enforcement re-  
2 sponsibilities under the delegation  
3 agreement;

4 “(H) has failed to meet its obli-  
5 gations under the delegation agree-  
6 ment; or

7 “(III) has violated this section;

8 “(ii) the rules, practices, or proce-  
9 dures of the affiliated regional reliability  
10 entity no longer provide for fair and im-  
11 partial discharge of the implementation or  
12 enforcement responsibilities under the dele-  
13 gation agreement;

14 “(iii) the geographic boundary of a  
15 transmission entity approved by the Com-  
16 mission is not wholly within the boundary  
17 of an affiliated regional reliability entity,  
18 and the difference in boundaries is incon-  
19 sistent with the effective and efficient im-  
20 plementation and administration of bulk-  
21 power system reliability; or

22 “(iv) the agreement is inconsistent  
23 with a delegation ordered by the Commis-  
24 sion under paragraph (4).

25 “(B) SUSPENSION.—

1           “(i) IN GENERAL.—Following an  
 2           order to modify a delegation agreement  
 3           under subparagraph (A), the Commission  
 4           may suspend the delegation agreement if  
 5           the electric reliability organization or the  
 6           affiliated regional reliability entity does not  
 7           propose an appropriate and timely modi-  
 8           fication.

9           “(ii) ASSUMPTION OF RESPONSIBIL-  
 10          ITIES.—If a delegation agreement is sus-  
 11          pended, the electric reliability organization  
 12          shall assume the responsibilities delegated  
 13          under the delegation agreement.

14          “(i) ORGANIZATION MEMBERSHIP.—Each system op-  
 15          erator shall be a member of—

16               “(1) the electric reliability organization; and

17               “(2) any affiliated regional reliability entity op-  
 18          erating under an agreement effective under sub-  
 19          section (h) applicable to the region in which the sys-  
 20          tem operator operates; or is responsible for the oper-  
 21          ation of, a transmission facility.

22          “(j) ENFORCEMENT.—

23               “(1) DISCIPLINARY ACTIONS.—

24                       “(A) IN GENERAL.—Consistent with proce-  
 25          dures approved by the Commission under sub-

1 section (d)(4)(H), the electric reliability organi-  
2 zation may impose a penalty, limitation on ac-  
3 tivities, functions, or operations, or other dis-  
4 ciplinary action that the electric reliability orga-  
5 nization finds appropriate against a bulk-power  
6 system user if the electric reliability organiza-  
7 tion, after notice and an opportunity for inter-  
8 ested parties to be heard, issues a finding in  
9 writing that the bulk-power system user has  
10 violated an organization standard.

11 “(B) NOTIFICATION.—The electric reli-  
12 ability organization shall immediately notify the  
13 Commission of any disciplinary action imposed  
14 with respect to an act or failure to act of a  
15 bulk-power system user that affected or threat-  
16 ened to affect bulk-power system facilities lo-  
17 cated in the United States.

18 “(C) RIGHT TO PETITION.—A bulk-power  
19 system user that is the subject of disciplinary  
20 action under paragraph (1) shall have the right  
21 to petition the Commission for a modification  
22 or rescission of the disciplinary action.

23 “(D) INJUNCTIONS.—If the electric reli-  
24 ability organization finds it necessary to prevent  
25 a serious threat to reliability, the electric reli-



1 ability organization may seek injunctive relief in  
 2 the United States district court for the district  
 3 in which the affected facilities are located.

4 “(E) EFFECTIVE DATE.—

5 “(i) IN GENERAL.—Unless the Com-  
 6 mission, on motion of the Commission or  
 7 on application by the bulk-power system  
 8 user that is the subject of the disciplinary  
 9 action, suspends the effectiveness of a dis-  
 10 ciplinary action, the disciplinary action  
 11 shall take effect on the 30th day after the  
 12 date on which—

13 “(I) the electric reliability organi-  
 14 zation submits to the Commission—

15 “(aa) a written finding that  
 16 the bulk-power system user vio-  
 17 lated an organization standard;  
 18 and

19 “(bb) the record of pro-  
 20 ceedings before the electric reli-  
 21 ability organization; and

22 “(H) the Commission posts the  
 23 written finding on the Internet.

24 “(ii) DURATION.—A disciplinary ac-  
 25 tion shall remain in effect or remain sus-

1           pended unless the Commission, after notice  
 2           and opportunity for hearing, affirms, sets  
 3           aside, modifies, or reinstates the discipli-  
 4           nary action.

5           “(iii) ~~EXPEDITED CONSIDERATION.~~—

6           The Commission shall conduct the hearing  
 7           under procedures established to ensure ex-  
 8           pedited consideration of the action taken.

9           “(2) ~~COMPLIANCE ORDERS.~~— The Commission,

10          on complaint by any person or on motion of the  
 11          Commission, may order compliance with an organi-  
 12          zation standard and may impose a penalty, limita-  
 13          tion on activities, functions, or operations, or take  
 14          such other disciplinary action as the Commission  
 15          finds appropriate, against a bulk-power system user  
 16          with respect to actions affecting or threatening to  
 17          affect bulk-power system facilities located in the  
 18          United States if the Commission finds, after notice  
 19          and opportunity for a hearing, that the bulk-power  
 20          system user has violated or threatens to violate an  
 21          organization standard.

22          “(3) ~~OTHER ACTIONS.~~—The Commission may

23          take such action as is necessary against the electric  
 24          reliability organization or an affiliated regional reli-  
 25          ability entity to ensure compliance with an organiza-

1       tion standard, or any Commission order affecting  
 2       electric reliability organization or affiliated regional  
 3       reliability entity.

4       “(k) RELIABILITY REPORTS.—The electric reliability  
 5       organization shall—

6               “(1) conduct periodic assessments of the reli-  
 7       ability and adequacy of the interconnected bulk-  
 8       power system in North America; and

9               “(2) report annually to the Secretary of Energy  
 10      and the Commission its findings and recommenda-  
 11      tions for monitoring or improving system reliability  
 12      and adequacy.

13      “(l) ASSESSMENT AND RECOVERY OF CERTAIN  
 14      COSTS.—

15              “(1) IN GENERAL.—The reasonable costs of the  
 16      electric reliability organization, and the reasonable  
 17      costs of each affiliated regional reliability entity that  
 18      are related to implementation or enforcement of or-  
 19      ganization standards or other requirements con-  
 20      tained in a delegation agreement approved under  
 21      subsection (h), shall be assessed by the electric reli-  
 22      ability organization and each affiliated regional reli-  
 23      ability entity, respectively, taking into account the  
 24      relationship of costs to each region and based on an

1 allocation that reflects an equitable sharing of the  
 2 costs among all electric energy consumers.

3 ~~“(2) RULES.—The Commission shall provide by~~  
 4 ~~rule for the review of costs and allocations under~~  
 5 ~~paragraph (1) in accordance with the standards in~~  
 6 ~~this subsection and subsection (d)(4)(F).~~

7 ~~“(m) APPLICATION OF ANTITRUST LAWS.—~~

8 ~~“(1) IN GENERAL.—Notwithstanding any other~~  
 9 ~~provision of law, the following activities are~~  
 10 ~~rebuttably presumed to be in compliance with the~~  
 11 ~~antitrust laws of the United States:~~

12 ~~“(A) Activities undertaken by the electric~~  
 13 ~~reliability organization under this section or af-~~  
 14 ~~iliated regional reliability entity operating~~  
 15 ~~under a delegation agreement under subsection~~  
 16 ~~(h).~~

17 ~~“(B) Activities of a member of the electric~~  
 18 ~~reliability organization or affiliated regional re-~~  
 19 ~~liability entity in pursuit of the objectives of the~~  
 20 ~~electric reliability organization or affiliated re-~~  
 21 ~~gional reliability entity under this section un-~~  
 22 ~~dertaken in good faith under the rules of the~~  
 23 ~~organization of the electric reliability organiza-~~  
 24 ~~tion or affiliated regional reliability entity.~~

1           “(2) AVAILABILITY OF DEFENSES.—In a civil  
 2           action brought by any person or entity against the  
 3           electric reliability organization or an affiliated re-  
 4           gional reliability entity alleging a violation of an  
 5           antitrust law based on an activity under this Act,  
 6           the defenses of primary jurisdiction and immunity  
 7           from suit and other affirmative defenses shall be  
 8           available to the extent applicable.

9           “(n) REGIONAL ADVISORY ROLE.—

10           “(1) ESTABLISHMENT OF REGIONAL ADVISORY  
 11           BODY.—The Commission shall establish a regional  
 12           advisory body on the petition of the Governors of at  
 13           least two-thirds of the States within a region that  
 14           have more than one-half of their electrical loads  
 15           served within the region.

16           “(2) MEMBERSHIP.—A regional advisory  
 17           body—

18                   “(A) shall be composed of 1 member from  
 19                   each State in the region, appointed by the Gov-  
 20                   ernor of the State; and

21                   “(B) may include representatives of agen-  
 22                   cies, States, and Provinces outside the United  
 23                   States, on execution of an appropriate inter-  
 24                   national agreement described in subsection (f).

1           “(3) FUNCTIONS.—A regional advisory body  
2           may provide advice to the electric reliability organi-  
3           zation, an affiliated regional reliability entity, or the  
4           Commission regarding—

5                 “(A) the governance of an affiliated re-  
6                 gional reliability entity existing or proposed  
7                 within a region;

8                 “(B) whether a standard proposed to apply  
9                 within the region is just, reasonable, not unduly  
10                discriminatory or preferential, and in the public  
11                interest; and

12                “(C) whether fees proposed to be assessed  
13                within the region are—

14                         “(i) just, reasonable, not unduly dis-  
15                         criminatory or preferential, and in the pub-  
16                         lic interest; and

17                         “(ii) consistent with the requirements  
18                         of subsection (1).

19           “(4) DEFERENCE.—In a case in which a re-  
20           gional advisory body encompasses an entire inter-  
21           connection, the Commission may give deference to  
22           advice provided by the regional advisory body under  
23           paragraph (3).

24           “(e) APPLICABILITY OF SECTION.—This section does  
25           not apply outside the 48 contiguous States.

1       “(p) REHEARINGS; COURT REVIEW OF ORDERS.—  
 2       Section 313 applies to an order of the Commission issued  
 3       under this section.”.

4       (b) ENFORCEMENT.—

5               (1) GENERAL PENALTIES.—Section 316(e) of  
 6       the Federal Power Act (16 U.S.C. 825o(e)) is  
 7       amended—

8                       (A) by striking “subsection” and inserting  
 9                       “section”; and

10                      (B) by striking “or 214” and inserting  
 11                      “214 or 215”.

12               (2) CERTAIN PROVISIONS.—Section 316A of the  
 13       Federal Power Act (16 U.S.C. 825o-1) is amended  
 14       by striking “or 214” each place it appears and in-  
 15       serting “214, or 215”.

16       (c) SAVINGS CLAUSE.—**[RESERVED]**

17   **SECTION 1. SHORT TITLE.**

18       *This Act may be cited as the “Electric Reliability 2000*  
 19       *Act”.*

20   **SEC. 2. ELECTRIC RELIABILITY ORGANIZATION.**

21       (a) *IN GENERAL.*—Part II of the Federal Power Act  
 22       (16 U.S.C. 824 et seq.) is amended by adding at the end  
 23       the following:

24   **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION.**

25       “(a) *DEFINITIONS.*—In this section:

1           “(1) *AFFILIATED REGIONAL RELIABILITY ENTI-*  
 2           *TY.—The term ‘affiliated regional reliability entity’*  
 3           *means an entity delegated authority under subsection*  
 4           *(h).*

5           “(2) *BULK-POWER SYSTEM.—*

6                 “(A) *IN GENERAL.—The term ‘bulk-power*  
 7                 *system’ means all facilities and control systems*  
 8                 *necessary for operating an interconnected electric*  
 9                 *power transmission grid or any portion of an*  
 10                 *interconnected transmission grid.*

11                 “(B) *INCLUSIONS.—The term ‘bulk-power*  
 12                 *system’ includes—*

13                         “(i) *high voltage transmission lines,*  
 14                         *substations, control centers, communica-*  
 15                         *tions, data, and operating planning facili-*  
 16                         *ties necessary for the operation of all or any*  
 17                         *part of the interconnected transmission*  
 18                         *grid; and*

19                         “(ii) *the output of generating units*  
 20                         *necessary to maintain the reliability of the*  
 21                         *transmission grid.*

22           “(3) *BULK-POWER SYSTEM USER.—The term*  
 23           *‘bulk-power system user’ means an entity that—*

24                         “(A) *sells, purchases, or transmits electric*  
 25                         *energy over a bulk-power system; or*



1                   “(B) owns, operates, or maintains facilities  
2                   or control systems that are part of a bulk-power  
3                   system; or

4                   “(C) is a system operator.

5                   “(4) *ELECTRIC RELIABILITY ORGANIZATION.*—  
6                   The term ‘electric reliability organization’ means the  
7                   organization designated by the Commission under  
8                   subsection (d).

9                   “(5) *ENTITY RULE.*—The term ‘entity rule’  
10                  means a rule adopted by an affiliated regional reli-  
11                  ability entity for a specific region and designed to  
12                  implement or enforce 1 or more organization stand-  
13                  ards.

14                  “(6) *INDEPENDENT DIRECTOR.*—The term ‘inde-  
15                  pendent director’ means a person that—

16                         “(A) is not an officer or employee of an en-  
17                         tity that would reasonably be perceived as hav-  
18                         ing a direct financial interest in the outcome of  
19                         a decision by the board of directors of the electric  
20                         reliability organization; and

21                         “(B) does not have a relationship that  
22                         would interfere with the exercise of independent  
23                         judgment in carrying out the responsibilities of  
24                         a director of the electric reliability organization.

1           “(7) *INDUSTRY SECTOR.*—*The term ‘industry*  
 2           *sector’ means a group of bulk-power system users with*  
 3           *substantially similar commercial interests, as deter-*  
 4           *mined by the board of directors of the electric reli-*  
 5           *ability organization.*

6           “(8) *INTERCONNECTION.*—*The term ‘interconnec-*  
 7           *tion’ means a geographic area in which the operation*  
 8           *of bulk-power system components is synchronized so*  
 9           *that the failure of 1 or more of the components may*  
 10          *adversely affect the ability of the operators of other*  
 11          *components within the interconnection to maintain*  
 12          *safe and reliable operation of the facilities within*  
 13          *their control.*

14          “(9) *ORGANIZATION STANDARD.*—

15               “(A) *IN GENERAL.*—*The term ‘organization*  
 16               *standard’ means a policy or standard adopted*  
 17               *by the electric reliability organization to provide*  
 18               *for the reliable operation of a bulk-power system.*

19               “(B) *INCLUSIONS.*—*The term ‘organization*  
 20               *standard’ includes—*

21                       “(i) *an entity rule approved by the*  
 22                       *electric reliability organization; and*

23                       “(ii) *a variance approved by the elec-*  
 24                       *tric reliability organization.*

25          “(10) *PUBLIC INTEREST GROUP.*—

1           “(A) *IN GENERAL.*—The term ‘public inter-  
 2           est group’ means a nonprofit private or public  
 3           organization that has an interest in the activi-  
 4           ties of the electric reliability organization.

5           “(B) *INCLUSIONS.*—The term ‘public inter-  
 6           est group’ includes—

7                   “(i) a ratepayer advocate;

8                   “(ii) an environmental group; and

9                   “(iii) a State or local government or-  
 10           ganization that regulates participants in,  
 11           and promulgates government policy with re-  
 12           spect to, the market for electric energy.

13       “(11) *SYSTEM OPERATOR.*—

14           “(A) *IN GENERAL.*—The term ‘system oper-  
 15           ator’ means an entity that operates or is respon-  
 16           sible for the operation of a bulk-power system.

17           “(B) *INCLUSIONS.*—The term ‘system oper-  
 18           ator’ includes—

19                   “(i) a control area operator;

20                   “(ii) an independent system operator;

21                   “(iii) a transmission company;

22                   “(iv) a transmission system operator;

23                   and

24                   “(v) a regional security coordinator.

1           “(12) *VARIANCE.*—*The term ‘variance’ means an*  
 2           *exception from the requirements of an organization*  
 3           *standard (including a proposal for an organization*  
 4           *standard in a case in which there is no organization*  
 5           *standard) that is adopted by an affiliated regional re-*  
 6           *liability entity and is applicable to all or a part of*  
 7           *the region for which the affiliated regional reliability*  
 8           *entity is responsible.*

9           “(b) *COMMISSION AUTHORITY.*—

10           “(1) *JURISDICTION.*—*Notwithstanding section*  
 11           *201(f), within the United States, the Commission*  
 12           *shall have jurisdiction over the electric reliability or-*  
 13           *ganization, all affiliated regional reliability entities,*  
 14           *all system operators, and all bulk-power users, includ-*  
 15           *ing entities described in section 201(f), for purposes*  
 16           *of approving organization standards and enforcing*  
 17           *compliance with this section.*

18           “(2) *DEFINITION OF TERMS.*—*The Commission*  
 19           *may by regulation define any term used in this sec-*  
 20           *tion consistent with the definitions in subsection (a)*  
 21           *and the purpose and intent of this Act.*

22           “(c) *EXISTING RELIABILITY STANDARDS.*—

23           “(1) *SUBMISSION TO THE COMMISSION.*—*Before*  
 24           *designation of an electric reliability organization*  
 25           *under subsection (d), any person, including the North*

1     *American Electric Reliability Council and its mem-*  
2     *ber Regional Reliability Councils, may submit to the*  
3     *Commission any reliability standard, guidance, prac-*  
4     *tice, or amendment to a reliability standard, guid-*  
5     *ance, or practice that the person proposes to be made*  
6     *mandatory and enforceable.*

7             “(2) *REVIEW BY THE COMMISSION.—The Com-*  
8     *mission, after allowing interested persons an oppor-*  
9     *tunity to submit comments, may approve a proposed*  
10    *mandatory standard, guidance, practice, or amend-*  
11    *ment submitted under paragraph (1) if the Commis-*  
12    *sion finds that the standard, guidance, or practice is*  
13    *just, reasonable, not unduly discriminatory or pref-*  
14    *erential, and in the public interest.*

15            “(3) *EFFECT OF APPROVAL.—A standard, guid-*  
16    *ance, or practice shall be mandatory and applicable*  
17    *according to its terms following approval by the Com-*  
18    *mission and shall remain in effect until it is—*

19               “(A) *withdrawn, disapproved, or superseded*  
20     *by an organization standard that is issued or*  
21     *approved by the electric reliability organization*  
22     *and made effective by the Commission under sec-*  
23     *tion (e); or*

24               “(B) *disapproved by the Commission if, on*  
25     *complaint or upon motion by the Commission*

1           *and after notice and an opportunity for com-*  
 2           *ment, the Commission finds the standard, guid-*  
 3           *ance, or practice to be unjust, unreasonable, un-*  
 4           *duly discriminatory or preferential, or not in the*  
 5           *public interest.*

6           “(4) *ENFORCEABILITY.*—*A standard, guidance,*  
 7           *or practice in effect under this subsection shall be en-*  
 8           *forceable by the Commission.*

9           “(d) *DESIGNATION OF ELECTRIC RELIABILITY ORGA-*  
 10          *NIZATION.*—

11           “(1) *REGULATIONS.*—

12           “(A) *PROPOSED REGULATIONS.*—*Not later*  
 13           *than 90 days after the date of enactment of this*  
 14           *section, the Commission shall propose regulations*  
 15           *specifying procedures and requirements for an*  
 16           *entity to apply for designation as the electric re-*  
 17           *liability organization.*

18           “(B) *NOTICE AND COMMENT.*—*The Commis-*  
 19           *sion shall provide notice and opportunity for*  
 20           *comment on the proposed regulations.*

21           “(C) *FINAL REGULATION.*—*Not later than*  
 22           *180 days after the date of enactment of this sec-*  
 23           *tion, the Commission shall promulgate final reg-*  
 24           *ulations under this subsection.*

25           “(2) *APPLICATION.*—

1           “(A) *Submission.*—*Following the promulga-*  
 2           *tion of final regulations under paragraph (1), an*  
 3           *entity may submit an application to the Com-*  
 4           *mission for designation as the electric reliability*  
 5           *organization.*

6           “(B) *CONTENTS.*—*The applicant shall de-*  
 7           *scribe in the application—*

8                   “(i) *the governance and procedures of*  
 9                   *the applicant; and*

10                   “(ii) *the funding mechanism and ini-*  
 11                   *tial funding requirements of the applicant.*

12           “(3) *NOTICE AND COMMENT.*—*The Commission*  
 13           *shall—*

14                   “(A) *provide public notice of the applica-*  
 15                   *tion; and*

16                   “(B) *afford interested parties an oppor-*  
 17                   *tunity to comment.*

18           “(4) *DESIGNATION OF ELECTRIC RELIABILITY*  
 19           *ORGANIZATION.*—*The Commission shall designate the*  
 20           *applicant as the electric reliability organization if the*  
 21           *Commission determines that the applicant—*

22                   “(A) *has the ability to develop, implement,*  
 23                   *and enforce standards that provide for an ade-*  
 24                   *quate level of reliability of bulk-power systems;*

1           “(B) permits voluntary membership to any  
2           bulk-power system user or public interest group;

3           “(C) ensures fair representation of its mem-  
4           bers in the selection of its directors and fair  
5           management of its affairs, taking into account  
6           the need for efficiency and effectiveness in deci-  
7           sionmaking and operations and the requirements  
8           for technical competency in the development of  
9           organization standards and the exercise of over-  
10          sight of bulk-power system reliability;

11          “(D) ensures that no 2 industry sectors have  
12          the ability to control, and no 1 industry sector  
13          has the ability to veto, the applicant’s discharge  
14          of its responsibilities as the electric reliability or-  
15          ganization (including actions by committees rec-  
16          ommending standards for approval by the board  
17          or other board actions to implement and enforce  
18          standards);

19          “(E) provides for governance by a board  
20          wholly comprised of independent directors;

21          “(F) provides a funding mechanism and re-  
22          quirements that—

23                  “(i) are just, reasonable, not unduly  
24                  discriminatory or preferential and in the  
25                  public interest; and



1                   “(ii) satisfy the requirements of sub-  
2                   section (l);

3                   “(G) has established procedures for develop-  
4                   ment of organization standards that—

5                   “(i) provide reasonable notice and op-  
6                   portunity for public comment, taking into  
7                   account the need for efficiency and effective-  
8                   ness in decisionmaking and operations and  
9                   the requirements for technical competency  
10                  in the development of organization stand-  
11                  ards;

12                  “(ii) ensure openness, a balancing of  
13                  interests, and due process; and

14                  “(iii) includes alternative procedures  
15                  to be followed in emergencies;

16                  “(H) has established fair and impartial  
17                  procedures for implementation and enforcement  
18                  of organization standards, either directly or  
19                  through delegation to an affiliated regional reli-  
20                  ability entity, including the imposition of pen-  
21                  alties, limitations on activities, functions, or op-  
22                  erations, or other appropriate sanctions;

23                  “(I) has established procedures for notice  
24                  and opportunity for public observation of all  
25                  meetings, except that the procedures for public

1        *observation may include alternative procedures*  
 2        *for emergencies or for the discussion of informa-*  
 3        *tion that the directors reasonably determine*  
 4        *should take place in closed session, such as liti-*  
 5        *gation, personnel actions, or commercially sen-*  
 6        *sitive information;*

7                *“(J) provides for the consideration of rec-*  
 8        *ommendations of States and State commissions;*  
 9        *and*

10               *“(K) addresses other matters that the Com-*  
 11        *mission considers appropriate to ensure that the*  
 12        *procedures, governance, and funding of the elec-*  
 13        *tric reliability organization are just, reasonable,*  
 14        *not unduly discriminatory or preferential, and*  
 15        *in the public interest.*

16        *“(5) EXCLUSIVE DESIGNATION.—*

17               *“(A) IN GENERAL.—The Commission shall*  
 18        *designate only 1 electric reliability organization.*

19               *“(B) MULTIPLE APPLICATIONS.—If the*  
 20        *Commission receives 2 or more timely applica-*  
 21        *tions that satisfy the requirements of this sub-*  
 22        *section, the Commission shall approve only the*  
 23        *application that the Commission determines will*  
 24        *best implement this section.*

25        *“(e) ORGANIZATION STANDARDS.—*

1           “(1) *SUBMISSION OF PROPOSALS TO COMMIS-*  
2           *SION.—*

3                   “(A) *IN GENERAL.—The electric reliability*  
4                   *organization shall submit to the Commission*  
5                   *proposals for any new or modified organization*  
6                   *standards.*

7                   “(B) *CONTENTS.—A proposal submitted*  
8                   *under subparagraph (A) shall include—*

9                           “(i) *a concise statement of the purpose*  
10                          *of the proposal; and*

11                          “(ii) *a record of any proceedings con-*  
12                          *ducted with respect to the proposal.*

13           “(2) *REVIEW BY THE COMMISSION.—*

14                   “(A) *NOTICE AND COMMENT.—The Commis-*  
15                   *sion shall—*

16                          “(i) *provide notice of a proposal under*  
17                          *paragraph (1); and*

18                          “(ii) *allow interested persons 30 days*  
19                          *to submit comments on the proposal.*

20                   “(B) *ACTION BY THE COMMISSION.—*

21                          “(i) *IN GENERAL.—After taking into*  
22                          *consideration any submitted comments, the*  
23                          *Commission shall approve or disapprove a*  
24                          *proposed organization standard not later*  
25                          *than the end of the 60-day period beginning*

1           on the date of the deadline for the submis-  
 2           sion of comments, except that the Commis-  
 3           sion may extend the 60-day period for an  
 4           additional 90 days for good cause.

5           “(ii) *FAILURE TO ACT.*—If the Com-  
 6           mission does not approve or disapprove a  
 7           proposal within the period specified in  
 8           clause (i), the proposed organization stand-  
 9           ard shall go into effect subject to its terms,  
 10          without prejudice to the authority of the  
 11          Commission to modify the organization  
 12          standard in accordance with the standards  
 13          and requirements of this section.

14          “(C) *EFFECTIVE DATE.*—An organization  
 15          standard approved by the Commission shall take  
 16          effect not earlier than 30 days after the date of  
 17          the Commission’s order of approval.

18          “(D) *STANDARDS FOR APPROVAL.*—

19               “(i) *IN GENERAL.*—The Commission  
 20               shall approve a proposed new or modified  
 21               organization standard if the Commission  
 22               determines the organization standard to be  
 23               just, reasonable, not unduly discriminatory  
 24               or preferential, and in the public interest.

1                   “(ii) *CONSIDERATIONS.—In the exer-*  
2                   *cise of its review responsibilities under this*  
3                   *subsection, the Commission—*

4                   “(I) *shall give due weight to the*  
5                   *technical expertise of the electric reli-*  
6                   *ability organization with respect to the*  
7                   *content of a new or modified organiza-*  
8                   *tion standard; but*

9                   “(II) *shall not defer to the electric*  
10                  *reliability organization with respect to*  
11                  *the effect of the organization standard*  
12                  *on competition.*

13                  “(E) *REMAND.—A proposed organization*  
14                  *standard that is disapproved in whole or in part*  
15                  *by the Commission shall be remanded to the elec-*  
16                  *tric reliability organization for further consider-*  
17                  *ation.*

18                  “(3) *ORDERS TO DEVELOP OR MODIFY ORGANI-*  
19                  *ZATION STANDARDS.—The Commission, on complaint*  
20                  *or on motion of the Commission, may order the elec-*  
21                  *tric reliability organization to develop and submit to*  
22                  *the Commission, by a date specified in the order, an*  
23                  *organization standard or modification to an existing*  
24                  *organization standard to address a specific matter if*  
25                  *the Commission considers a new or modified organi-*

1        *zation standard appropriate to carry out this section,*  
 2        *and the electric reliability organization shall develop*  
 3        *and submit the organization standard or modification*  
 4        *to the Commission in accordance with this subsection.*

5                *“(4) VARIANCES AND ENTITY RULES.—*

6                        *“(A) PROPOSAL.—An affiliated regional re-*  
 7                        *liability entity may propose a variance or entity*  
 8                        *rule to the electric reliability organization.*

9                        *“(B) EXPEDITED CONSIDERATION.—If expe-*  
 10                        *dited consideration is necessary to provide for*  
 11                        *bulk-power system reliability, the affiliated re-*  
 12                        *gional reliability entity may—*

13                                *“(i) request that the electric reliability*  
 14                                *organization expedite consideration of the*  
 15                                *proposal; and*

16                                *“(ii) file a notice of the request with*  
 17                                *the Commission.*

18                        *“(C) FAILURE TO ACT.—*

19                                *“(i) IN GENERAL.—If the electric reli-*  
 20                                *ability organization fails to adopt the vari-*  
 21                                *ance or entity rule, in whole or in part, the*  
 22                                *affiliated regional reliability entity may re-*  
 23                                *quest that the Commission review the pro-*  
 24                                *posal.*

1                   “(ii) *ACTION BY THE COMMISSION.*—If  
2                   *the Commission determines, after a review*  
3                   *of the request, that the action of the electric*  
4                   *reliability organization did not conform to*  
5                   *the applicable standards and procedures ap-*  
6                   *proved by the Commission, or if the Com-*  
7                   *mission determines that the variance or en-*  
8                   *tity rule is just, reasonable, not unduly dis-*  
9                   *criminatory or preferential, and in the pub-*  
10                  *lic interest and that the electric reliability*  
11                  *organization has unreasonably rejected or*  
12                  *failed to act on the proposal, the Commis-*  
13                  *sion may—*

14                   “(I) *remand the proposal for fur-*  
15                   *ther consideration by the electric reli-*  
16                   *ability organization; or*

17                   “(II) *order the electric reliability*  
18                   *organization or the affiliated regional*  
19                   *reliability entity to develop a variance*  
20                   *or entity rule consistent with that re-*  
21                   *quested by the affiliated regional reli-*  
22                   *ability entity.*

23                   “(D) *PROCEDURE.*—A *variance or entity*  
24                   *rule proposed by an affiliated regional reliability*  
25                   *entity shall be submitted to the electric reli-*

ability organization for review and submission to the Commission in accordance with the procedures specified in paragraph (2).

“(5) *IMMEDIATE EFFECTIVENESS.*—

“(A) *IN GENERAL.*—Notwithstanding any other provision of this subsection, a new or modified organization standard shall take effect immediately on submission to the Commission without notice or comment if the electric reliability organization—

“(i) determines that an emergency exists requiring that the new or modified organization standard take effect immediately without notice or comment;

“(ii) notifies the Commission as soon as practicable after make the determination;

“(iii) submits the new or modified organization standard to the Commission not later than 5 days after making the determination; and

“(iv) includes in the submission an explanation of the need for immediate effectiveness.

“(B) *NOTICE AND COMMENT.*—The Commission shall—



1                   “(i) provide notice of the new or modi-  
 2                   fied organization standard or amendment  
 3                   for comment; and

4                   “(ii) follow the procedures set out in  
 5                   paragraphs (2) and (3) for review of the  
 6                   new or modified organization standard.

7                   “(6) COMPLIANCE.—Each bulk power system  
 8                   user shall comply with an organization standard that  
 9                   takes effect under this section.

10                  “(f) COORDINATING WITH CANADA AND MEXICO.—

11                   “(1) RECOGNITION.—The electric reliability or-  
 12                   ganization shall take all appropriate steps to gain  
 13                   recognition in Canada and Mexico.

14                   “(2) INTERNATIONAL AGREEMENTS.—

15                   “(A) IN GENERAL.—The President shall use  
 16                   best efforts to enter into international agreements  
 17                   with the appropriate governments of Canada  
 18                   and Mexico to provide for—

19                   “(i) effective compliance with organi-  
 20                   zation standards; and

21                   “(ii) the effectiveness of the electric re-  
 22                   liability organization in carrying out its  
 23                   mission and responsibilities.

24                   “(B) COMPLIANCE.—All actions taken by  
 25                   the electric reliability organization, an affiliated

1           *regional reliability entity, and the Commission*  
 2           *shall be consistent with any international agree-*  
 3           *ment under subparagraph (A).*

4           “(g) *CHANGES IN PROCEDURE, GOVERNANCE, OR*  
 5           *FUNDING.—*

6           “(1) *SUBMISSION TO THE COMMISSION.—The*  
 7           *electric reliability organization shall submit to the*  
 8           *Commission—*

9                   “(A) *any proposed change in a procedure,*  
 10                  *governance, or funding provision; or*

11                  “(B) *any change in an affiliated regional*  
 12                  *reliability entity’s procedure, governance, or*  
 13                  *funding provision relating to delegated functions.*

14           “(2) *CONTENTS.—A submission under para-*  
 15           *graph (1) shall include an explanation of the basis*  
 16           *and purpose for the change.*

17           “(3) *EFFECTIVENESS.—*

18                   “(A) *CHANGES IN PROCEDURE.—*

19                           “(i) *CHANGES CONSTITUTING A STATE-*  
 20                           *MENT OF POLICY, PRACTICE, OR INTERPRE-*  
 21                           *TATION.—A proposed change in procedure*  
 22                           *shall take effect 90 days after submission to*  
 23                           *the Commission if the change constitutes a*  
 24                           *statement of policy, practice, or interpreta-*

tion with respect to the meaning or enforcement of the procedure.

“(ii) *OTHER CHANGES.*—A proposed change in procedure other than a change described in clause (i) shall take effect on a finding by the Commission, after notice and opportunity for comment, that the change—

“(I) is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(II) satisfies the requirements of subsection (d)(4).

“(B) *CHANGES IN GOVERNANCE OR FUNDING.*—A proposed change in governance or funding shall not take effect unless the Commission finds that the change—

“(i) is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(ii) satisfies the requirements of subsection (d)(4).

“(4) *ORDER TO AMEND.*—

“(A) *IN GENERAL.*—The Commission, on complaint or on the motion of the Commission, may require the electric reliability organization

1           to amend a procedural, governance, or funding  
 2           provision if the Commission determines that the  
 3           amendment is necessary to meet the requirements  
 4           of the section.

5           “(B) *FILING*.—The electric reliability orga-  
 6           nization shall submit the amendment in accord-  
 7           ance with paragraph (1).

8           “(h) *DELEGATIONS OF AUTHORITY*.—

9           “(1) *IN GENERAL*.—

10           “(A) *IMPLEMENTATION AND ENFORCEMENT*  
 11           *OF COMPLIANCE*.—At the request of an entity,  
 12           the electric reliability organization shall enter  
 13           into an agreement with the entity for the delega-  
 14           tion of authority to implement and enforce com-  
 15           pliance with organization standards in a speci-  
 16           fied geographic area if the electric reliability or-  
 17           ganization finds that—

18           “(i) the entity satisfies the require-  
 19           ments of subparagraphs (A), (B), (C), (D),  
 20           (F), (J), and (K) of subsection (d)(4); and

21           “(ii) the delegation would promote the  
 22           effective and efficient implementation and  
 23           administration of bulk-power system reli-  
 24           ability.

1           “(B) *OTHER AUTHORITY.*—*The electric reli-*  
 2           *ability organization may enter into an agree-*  
 3           *ment to delegate to an entity any other author-*  
 4           *ity, except that the electric reliability organiza-*  
 5           *tion shall reserve the right to set and approve*  
 6           *standards for bulk-power system reliability.*

7           “(2) *APPROVAL BY THE COMMISSION.*—

8           “(A) *SUBMISSION TO THE COMMISSION.*—  
 9           *The electric reliability organization shall submit*  
 10          *to the Commission—*

11                  “(i) *any agreement entered into under*  
 12                  *this subsection; and*

13                  “(ii) *any information the Commission*  
 14                  *requires with respect to the affiliated re-*  
 15                  *gional reliability entity to which authority*  
 16                  *is delegated.*

17           “(B) *STANDARDS FOR APPROVAL.*—*The*  
 18           *Commission shall approve the agreement, fol-*  
 19           *lowing public notice and an opportunity for*  
 20           *comment, if the Commission finds that the*  
 21           *agreement—*

22                  “(i) *meets the requirements of para-*  
 23                  *graph (1); and*

1                   “(ii) is just, reasonable, not unduly  
2                   discriminatory or preferential, and in the  
3                   public interest.

4                   “(C) *REBUTTABLE PRESUMPTION*.—A pro-  
5                   posed delegation agreement with an affiliated re-  
6                   gional reliability entity organized on an inter-  
7                   connection-wide basis shall be rebuttably pre-  
8                   sumed by the Commission to promote the effec-  
9                   tive and efficient implementation and adminis-  
10                  tration of the reliability of the bulk-power sys-  
11                  tem.

12                  “(D) *INVALIDITY ABSENT APPROVAL*.—No  
13                  delegation by the electric reliability organization  
14                  shall be valid unless the delegation is approved  
15                  by the Commission.

16                  “(3) *PROCEDURES FOR ENTITY RULES AND*  
17                  *VARIANCES*.—

18                  “(A) *IN GENERAL*.—A delegation agreement  
19                  under this subsection shall specify the procedures  
20                  by which the affiliated regional reliability entity  
21                  may propose entity rules or variances for review  
22                  by the electric reliability organization.

23                  “(B) *INTERCONNECTION-WIDE ENTITY*  
24                  *RULES AND VARIANCES*.—In the case of a pro-  
25                  posal for an entity rule or variance that would

1        *apply on an interconnection-wide basis, the elec-*  
2        *tric reliability organization shall approve the en-*  
3        *tity rule or variance unless the electric reli-*  
4        *ability organization makes a written finding*  
5        *that the entity rule or variance—*

6                *“(i) was not developed in a fair and*  
7                *open process that provided an opportunity*  
8                *for all interested parties to participate;*

9                *“(ii) would have a significant adverse*  
10               *impact on reliability or commerce in other*  
11               *interconnections;*

12               *“(iii) fails to provide a level of reli-*  
13               *ability of the bulk-power system within the*  
14               *interconnection such that the entity rule or*  
15               *variance would be likely to cause a serious*  
16               *and substantial threat to public health, safe-*  
17               *ty, welfare, or national security; or*

18               *“(iv) would create a serious and sub-*  
19               *stantial burden on competitive markets*  
20               *within the interconnection that is not nec-*  
21               *essary for reliability.*

22               *“(C) NONINTERCONNECTION-WIDE ENTITY*  
23               *RULES AND VARIANCES.—In the case of a pro-*  
24               *posal for an entity rule or variance that would*  
25               *apply only to part of an interconnection, the*

1       *electric reliability organization shall approve the*  
 2       *entity rule or variance if the affiliated regional*  
 3       *reliability entity demonstrates that the*  
 4       *proposal—*

5               “(i) *was developed in a fair and open*  
 6               *process that provided an opportunity for all*  
 7               *interested parties to participate;*

8               “(ii) *would not have an adverse im-*  
 9                *pact on commerce that is not necessary for*  
 10              *reliability;*

11              “(iii) *provides a level of bulk-power*  
 12              *system reliability that is adequate to protect*  
 13              *public health, safety, welfare, and national*  
 14              *security and would not have a significant*  
 15              *adverse impact on reliability; and*

16              “(iv) *in the case of a variance, is based*  
 17              *on a justifiable difference between regions or*  
 18              *subregions within the affiliated regional re-*  
 19              *liability entity’s geographic area.*

20              “(D) *ACTION BY THE ELECTRIC RELI-*  
 21              *ABILITY ORGANIZATION.—*

22              “(i) *IN GENERAL.—The electric reli-*  
 23              *ability organization shall approve or dis-*  
 24              *approve a proposal under subparagraph (A)*



1           *within 120 days after the proposal is sub-*  
 2           *mitted.*

3           “(ii) *FAILURE TO ACT.*—*If the electric*  
 4           *reliability organization fails to act within*  
 5           *the time specified in clause (i), the proposal*  
 6           *shall be deemed to have been approved.*

7           “(iii) *SUBMISSION TO THE COMMIS-*  
 8           *SION.*—*After approving a proposal under*  
 9           *subparagraph (A), the electric reliability or-*  
 10          *ganization shall submit the proposal to the*  
 11          *Commission for approval under the proce-*  
 12          *dures prescribed under subsection (e).*

13          “(E) *DIRECT SUBMISSIONS.*—*An affiliated*  
 14          *regional reliability entity may not submit a pro-*  
 15          *posal for approval directly to the Commission*  
 16          *except as provided in subsection (e)(4).*

17          “(4) *FAILURE TO REACH DELEGATION AGREE-*  
 18          *MENT.*—

19          “(A) *IN GENERAL.*—*If an affiliated regional*  
 20          *reliability entity requests, consistent with para-*  
 21          *graph (1), that the electric reliability organiza-*  
 22          *tion delegate authority to it, but is unable with-*  
 23          *in 180 days to reach agreement with the electric*  
 24          *reliability organization with respect to the re-*

1        *quested delegation, the entity may seek relief*  
 2        *from the Commission.*

3                *“(B) REVIEW BY THE COMMISSION.—The*  
 4        *Commission shall order the electric reliability or-*  
 5        *ganization to enter into a delegation agreement*  
 6        *under terms specified by the Commission if, after*  
 7        *notice and opportunity for comment, the Com-*  
 8        *mission determines that—*

9                *“(i) a delegation to the affiliated re-*  
 10        *gional reliability entity would—*

11                *“(I) meet the requirements of*  
 12        *paragraph (1); and*

13                *“(II) would be just, reasonable,*  
 14        *not unduly discriminatory or pref-*  
 15        *erential, and in the public interest;*  
 16        *and*

17                *“(ii) the electric reliability organiza-*  
 18        *tion unreasonably withheld the delegation.*

19                *“(5) ORDERS TO MODIFY DELEGATION AGREE-*  
 20        *MENTS.—*

21                *“(A) IN GENERAL.—On complaint, or on*  
 22        *motion of the Commission, after notice to the ap-*  
 23        *propriate affiliated regional reliability entity,*  
 24        *the Commission may order the electric reliability*  
 25        *organization to propose a modification to a dele-*

1           *gation agreement under this subsection if the*  
2           *Commission determines that—*

3                   “(i) *the affiliated regional reliability*  
4                   *entity—*

5                           “(I) *no longer has the capacity to*  
6                           *carry out effectively or efficiently the*  
7                           *implementation or enforcement respon-*  
8                           *sibilities under the delegation agree-*  
9                           *ment;*

10                           “(II) *has failed to meet its obliga-*  
11                           *tions under the delegation agreement;*  
12                           *or*

13                           “(III) *has violated this section;*

14                           “(ii) *the rules, practices, or procedures*  
15                           *of the affiliated regional reliability entity*  
16                           *no longer provide for fair and impartial*  
17                           *discharge of the implementation or enforce-*  
18                           *ment responsibilities under the delegation*  
19                           *agreement;*

20                           “(iii) *the geographic boundary of a*  
21                           *transmission entity approved by the Com-*  
22                           *mission is not wholly within the boundary*  
23                           *of an affiliated regional reliability entity,*  
24                           *and the difference in boundaries is incon-*  
25                           *sistent with the effective and efficient imple-*

1                    *mentation and administration of bulk-*  
 2                    *power system reliability; or*

3                    *“(iv) the agreement is inconsistent*  
 4                    *with a delegation ordered by the Commis-*  
 5                    *sion under paragraph (4).*

6                    *“(B) SUSPENSION.—*

7                    *“(i) IN GENERAL.—Following an order*  
 8                    *to modify a delegation agreement under*  
 9                    *subparagraph (A), the Commission may*  
 10                    *suspend the delegation agreement if the elec-*  
 11                    *tric reliability organization or the affiliated*  
 12                    *regional reliability entity does not propose*  
 13                    *an appropriate and timely modification.*

14                    *“(ii) ASSUMPTION OF RESPONSIBIL-*  
 15                    *ITIES.—If a delegation agreement is sus-*  
 16                    *pended, the electric reliability organization*  
 17                    *shall assume the responsibilities delegated*  
 18                    *under the delegation agreement.*

19                    *“(i) ORGANIZATION MEMBERSHIP.—Each system op-*  
 20                    *erator shall be a member of—*

21                    *“(1) the electric reliability organization; and*

22                    *“(2) any affiliated regional reliability entity op-*  
 23                    *erating under an agreement effect under subsection*  
 24                    *(h) applicable to the region in which the system oper-*

1        *ator operates, or is responsible for the operation of, a*  
 2        *transmission facility.*

3        “(j) *ENFORCEMENT.*—

4            “(1) *DISCIPLINARY ACTIONS.*—

5                    “(A) *IN GENERAL.*—Consistent with proce-  
 6                    *dures approved by the Commission under sub-*  
 7                    *section (d)(4)(H), the electric reliability organi-*  
 8                    *zation may impose a penalty, limitation on ac-*  
 9                    *tivities, functions, or operations, or other dis-*  
 10                   *ciplinary action that the electric reliability orga-*  
 11                   *nization finds appropriate against a bulk-power*  
 12                   *system user if the electric reliability organiza-*  
 13                   *tion, after notice and an opportunity for inter-*  
 14                   *ested parties to be heard, issues a finding in*  
 15                   *writing that the bulk-power system user has vio-*  
 16                   *lated an organization standard.*

17                   “(B) *NOTIFICATION.*—The electric reli-  
 18                   *ability organization shall immediately notify the*  
 19                   *Commission of any disciplinary action imposed*  
 20                   *with respect to an act or failure to act of a bulk-*  
 21                   *power system user that affected or threatened to*  
 22                   *affect bulk-power system facilities located in the*  
 23                   *United States.*

24                   “(C) *RIGHT TO PETITION.*—A bulk-power  
 25                   *system user that is the subject of disciplinary ac-*

tion under paragraph (1) shall have the right to  
petition the Commission for a modification or  
rescission of the disciplinary action.

“(D) *INJUNCTIONS.*—If the electric reliability organization finds it necessary to prevent a serious threat to reliability, the electric reliability organization may seek injunctive relief in the United States district court for the district in which the affected facilities are located.

“(E) *EFFECTIVE DATE.*—

“(i) *IN GENERAL.*—Unless the Commission, on motion of the Commission or on application by the bulk-power system user that is the subject of the disciplinary action, suspends the effectiveness of a disciplinary action, the disciplinary action shall take effect on the 30th day after the date on which—

“(I) the electric reliability organization submits to the Commission—

“(aa) a written finding that the bulk-power system user violated an organization standard; and

1                   “(bb) the record of pro-  
2                   ceedings before the electric reli-  
3                   ability organization; and

4                   “(II) the Commission posts the  
5                   written finding on the Internet.

6                   “(ii) *DURATION*.—A disciplinary ac-  
7                   tion shall remain in effect or remain sus-  
8                   pended unless the Commission, after notice  
9                   and opportunity for hearing, affirms, sets  
10                  aside, modifies, or reinstates the discipli-  
11                  nary action.

12                  “(iii) *EXPEDITED CONSIDERATION*.—  
13                  The Commission shall conduct the hearing  
14                  under procedures established to ensure expe-  
15                  dited consideration of the action taken.

16                  “(2) *COMPLIANCE ORDERS*.—The Commission,  
17                  on complaint by any person or on motion of the Com-  
18                  mission, may order compliance with an organization  
19                  standard and may impose a penalty, limitation on  
20                  activities, functions, or operations, or take such other  
21                  disciplinary action as the Commission finds appro-  
22                  priate, against a bulk-power system user with respect  
23                  to actions affecting or threatening to affect bulk-power  
24                  system facilities located in the United States if the  
25                  Commission finds, after notice and opportunity for a

1        *hearing, that the bulk-power system user has violated*  
 2        *or threatens to violate an organization standard.*

3            “(3) *OTHER ACTIONS.—The Commission may*  
 4        *take such action as is necessary against the electric*  
 5        *reliability organization or an affiliated regional reli-*  
 6        *ability entity to ensure compliance with an organiza-*  
 7        *tion standard, or any Commission order affecting*  
 8        *electric reliability organization or affiliated regional*  
 9        *reliability entity.*

10          “(k) *RELIABILITY REPORTS.—The electric reliability*  
 11        *organization shall—*

12            “(1) *conduct periodic assessment of the reli-*  
 13        *ability and adequacy of the interconnected bulk-power*  
 14        *system in North America; and*

15            “(2) *report annually to the Secretary of Energy*  
 16        *and the Commission its findings and recommenda-*  
 17        *tions for monitoring or improving system reliability*  
 18        *and adequacy.*

19          “(l) *ASSESSMENT AND RECOVERY OF CERTAIN*  
 20        *COSTS.—*

21            “(1) *IN GENERAL.—The reasonable costs of the*  
 22        *electric reliability organization, and the reasonable*  
 23        *costs of each affiliated regional reliability entity that*  
 24        *are related to implementation or enforcement of orga-*  
 25        *nization standards or other requirements contained in*



1     *a delegation agreement approved under subsection*  
 2     *(h), shall be assessed by the electric reliability organi-*  
 3     *zation and each affiliated regional reliability entity,*  
 4     *respectively, taking into account the relationship of*  
 5     *costs to each region and based on an allocation that*  
 6     *reflects an equitable sharing of the costs among all*  
 7     *electric energy consumers.*

8             “(2) *RULES.—The Commission shall provide by*  
 9     *rule for the review of costs and allocations under*  
 10    *paragraph (1) in accordance with the standards in*  
 11    *this subsection and subsection (d)(4)(F).*

12            “(m) *APPLICATION OF ANTITRUST LAWS.—*

13            “(1) *IN GENERAL.—Notwithstanding any other*  
 14    *provision of law, the following activities are*  
 15    *rebuttably presumed to be in compliance with the*  
 16    *antitrust laws of the United States:*

17            “(A) *Activities undertaken by the electric*  
 18    *reliability organization under this section or af-*  
 19    *iliated regional reliability entity operating*  
 20    *under a delegation agreement under subsection*  
 21    *(h).*

22            “(B) *Activities of a member of the electric*  
 23    *reliability organizations or affiliated regional re-*  
 24    *liability entity in pursuit of the objectives of the*  
 25    *electric reliability organization or affiliated re-*

gional reliability entity under this section undertaken in good faith under the rules of the organization of the electric reliability organization or affiliated regional reliability entity.

“(2) *AVAILABILITY OF DEFENSES.*—In a civil action brought by any person or entity against the electric reliability organization or an affiliated regional reliability entity alleging a violation of an antitrust law based on an activity under this Act, the defenses of primary jurisdiction and immunity from suit and other affirmative defenses shall be available to the extent applicable.

“(n) *REGIONAL ADVISORY ROLE.*—

“(1) *ESTABLISHMENT OF REGIONAL ADVISORY BODY.*—The Commission shall establish a regional advisory body on the petition of the Governors of at least two-thirds of the States within a region that have more than one-half of their electrical loads served within the region.

“(2) *MEMBERSHIP.*—A regional advisory body—

“(A) shall be composed of 1 member from each State in the region, appointed by the Governor of the State; and

“(B) may include representatives of agencies, States, and Provinces outside the United

1           *States, on execution of an appropriate inter-*  
 2           *national agreement described in subsection (f).*

3           “(3) *FUNCTIONS.*—*A regional advisory body*  
 4           *may provide advice to the electric reliability organi-*  
 5           *zation, an affiliated regional reliability entity, or the*  
 6           *Commission regarding—*

7                   “(A) *the governance of an affiliated regional*  
 8                   *reliability entity existing or proposed within a*  
 9                   *region;*

10                   “(B) *whether a standard proposed to apply*  
 11                   *within the region is just, reasonable, not unduly*  
 12                   *discriminatory or preferential, and in the public*  
 13                   *interest; and*

14                   “(C) *whether fees proposed to be assessed*  
 15                   *within the region are—*

16                           “(i) *just, reasonable, not unduly dis-*  
 17                           *criminatory or preferential, and in the pub-*  
 18                           *lic interest; and*

19                           “(ii) *consistent with the requirements*  
 20                           *of subsection (1).*

21           “(4) *DEFERENCE.*—*In a case in which a re-*  
 22           *gional advisory body encompasses an entire inter-*  
 23           *connection, the Commission may give deference to ad-*  
 24           *vice provided by the regional advisory body under*  
 25           *paragraph (3).*

1       “(o) *APPLICABILITY OF SECTION.*—*This section does*  
 2   *not apply outside the 48 contiguous States.*

3       “(p) *REHEARINGS; COURT REVIEW OF ORDERS.*—*Sec-*  
 4   *tion 313 applies to an order of the Commission issued under*  
 5   *this section.*

6       “(q) *PRESERVATION OF STATE AUTHORITY.*—

7               “(1) *The Electric Reliability Organization shall*  
 8   *have authority to develop, implement, and enforce*  
 9   *compliance with standards for the reliable operation*  
 10   *of only the Bulk Power System.*

11              “(2) *This section does not provide the Electric*  
 12   *Reliability Organization or the Commission with the*  
 13   *authority to set and enforce compliance with stand-*  
 14   *ards for adequacy or safety of electric facilities or*  
 15   *services.*

16              “(3) *Nothing in this section shall be construed to*  
 17   *preempt any authority of any State to take action to*  
 18   *ensure the safety, adequacy, and reliability of electric*  
 19   *service within that State, as long as such action is*  
 20   *not inconsistent with any Organization Standard.*

21              “(4) *Not later than 90 days after the application*  
 22   *of the Electric Reliability Organization or other af-*  
 23   *ected party, the Commission shall issue a final order*  
 24   *determining whether a state action is inconsistent*  
 25   *with an Organization Standard, after notice and op-*

1     portunity for comment, taking into consideration any  
 2     recommendations of the *Electric Reliability Organiza-*  
 3     tion.

4             “(5) *The Commission, after consultation with the*  
 5     *Electric Reliability Organization, may stay the effec-*  
 6     *tiveness of any state action, pending the Commis-*  
 7     *sion’s issuance of a final order.”.*

8     “(b) *ENFORCEMENT.—*

9             “(1) *GENERAL PENALTIES.—Section 316(c) of*  
 10     *the Federal Power Act (16 U.S.C. 825o(c)) is*  
 11     *amended—*

12             “(A) *by striking “subsection” and inserting*  
 13     *“section”; and*

14             “(B) *by striking “or 214” and inserting*  
 15     *“214 or 215”.*

16             “(2) *CERTAIN PROVISIONS.—Section 316A of the*  
 17     *Federal Power Act (16 U.S.C. 825o–1) is amended by*  
 18     *striking “or 214” each place it appears and inserting*  
 19     *“214, or 215”.*

**Calendar No. 642**

106TH CONGRESS  
2D SESSION

**S. 2071**

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**A BILL**

To benefit electricity consumers by promoting the  
reliability of the bulk-power system.

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JUNE 27, 2000

Reported with an amendment